

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ERNEST J. BROOKS, III,

Petitioner,

vs.

KEN CLARK, Warden,

Respondent.

CASE NO. 08 CV 0125 JM (BLM)

ORDER:

**1) GRANTING PETITIONER'S
MOTION FOR TRANSCRIPTS;
2) GRANTING PETITIONER'S EX
PARTE REQUEST FOR
ENLARGEMENT OF TIME; and
3) SETTING TIME FOR REPLY**

Doc. Nos. 17 and 19

On January 22, 2008, Petitioner, a state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus challenging the validity of his sexual molestation convictions, arguing the state trial court improperly admitted evidence of prior, similar acts. (Doc. No. 1 at 6-23.) On November 12, 2008, Magistrate Judge Barbara Lynn Major issued a Report and Recommendations (Doc. No. 15, "R&R") on the petition, setting filing deadlines of December 3, 2008 for objections and December 24, 2008 for replies.

Pending before the court are Petitioner's "ex parte request for documents" (Doc. No. 17), which the court construes as a motion for transcripts under 28 U.S.C. § 753(f), and ex parte request for a 30-day enlargement of time to file his objections (Doc. No. 19). Petitioner supports these requests with the following declarations: 1) because of a hospitalization, he did not receive the R&R until November 20, 2008; 2) he is presently preparing a Ninth Circuit appeal in another case with an upcoming deadline; 3) certain legal documents were removed from his cell by correction officers in

1 January 2006; and 4) his prison facility is currently in lockdown, which prevents him from regular
2 access to the prison law library. (Doc. Nos. 17 and 19.)


3 For good cause showing, the court hereby **GRANTS** Petitioner's motion for transcripts. The
4 Clerk of Court is instructed to send Petitioner the requested copies (requested items numbered 1-7
5 were lodged with the court by Respondent on June 12, 2008 (See Doc. No. 9-3)), to include:

- 6 1. Brooks' Opening Brief in state court, No. D040566;
- 7 2. Unpublished appellate opinion, California Fourth District Court of Appeal, Division One,
8 filed April 23, 2003, No. D040566;
- 9 3. Petition for Review, California Supreme Court, No. S121720;
- 10 4. Order Denying Petition for Review, No. S121720, filed February 18, 2004;
- 11 5. Petition for Writ of Habeas Corpus, California District Court of Appeal, No. D046561,
12 filed June 3, 2005, together with exhibits which include copies of:
13 a) Brooks' Writ of Habeas Corpus HC 17276 (filed 2003) and Opinion and
14 Order denying the petition (Feb. 10, 2003); and
15 b) Brooks' Second Habeas Corpus Petition, HC 17276, filed April 2004, and
16 Opinion and Order, filed June 4, 2004;
- 17 6. Petition for Writ of Habeas Corpus, California Supreme Court, filed May 8, 2006;
- 18 7. Order of California Supreme Court denying petition, No. S143190, filed January 17,
19 2007; and
- 20 8. Docket Summary Report.

21 Further, the court hereby **GRANTS** Petitioner's ex parte request for enlargement of time (Doc.
22 No. 19). Any party to this action may file written objections with the court and serve a copy on all
23 parties **no later than January 3, 2009**. Any reply to the objections shall be filed with the court and
24 served on all parties **no later than January 26, 2009**.

25 **IT IS SO ORDERED.**

26 DATED: December 9, 2008

27 
28 Hon. Jeffrey T. Miller
United States District Judge